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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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9  
10 UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VIA FAX

12  
13 ROLAND WINTERS, JR., an  
individual,

14 Plaintiff,

15 v.

16 CARNIVAL CORPORATION & PLC  
17 d/b/a CARNIVAL CRUISE LINES, a  
business entity, and DOLS 1-10,

18 Defendants.

CASE NO.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
DAMAGES FOR VIOLATIONS OF:

1. Title III of the Americans with Disabilities Act (42 U.S.C. §§ 12181 *et seq.*);
2. Unruh Civil Rights Act (California Civil Code § 51 *et seq.*);
3. Blind and Other Physically Disabled Persons Act (California Civil Code § 54 *et seq.*);
4. Business and Professions Code § 17200;
5. Intentional Infliction of Emotional Distress;
6. Negligence *per se*;
7. False Imprisonment; and
8. Declaratory Relief.

21  
22  
23  
24  
25 DEMAND FOR JURY TRIAL

## INTRODUCTION

1  
2 1. Carnival Corporation & PLC, which does business as Carnival Cruise  
3 Lines ("Carnival" or "Defendant"), boasts the slogan, "The Fun Ships." However,  
4 a trip on one of their ships was not fun for Plaintiff Roland Winters, Jr., who uses  
5 a wheelchair. Instead, his experience with Carnival included discrimination and  
6 misrepresentation.

7 2. Mr. Winters is a leader of the "Handicapped Travel Club" who enjoys  
8 traveling by sea with his family and friends. However, the treatment that he and  
9 his companions received from Carnival turned what should have been an  
10 enjoyable experience into one of discrimination and frustration. More specifically,  
11 Carnival failed to provide Mr. Winters accurate information about the accessibility  
12 of its ports of call for people with disabilities. This led Mr. Winters to go on the  
13 cruise thinking that he could visit the major ports of call, only to find out once on  
14 board the ship that half of the ports were inaccessible to him.

15 3. Part of the appeal of a cruise such as those offered by Carnival is the  
16 opportunity to visit exciting destinations while having the convenience and fun of  
17 a floating hotel. With this in mind, Mr. Winters and members of his travel club  
18 purchased tickets for Carnival's *Elation* which included Cabo San Lucas, Mexico  
19 as one of two major ports of call for the cruise.

20 4. After purchasing his tickets, Mr. Winters received Carnival's written  
21 policy for passengers with disabilities which indicated a possibility that Mr.  
22 Winters and those similarly situated may not board a small boat, or tender, at  
23 certain ports of call. However, the information did not provide him with a clear  
24 answer about whether he would be able to disembark at Cabo San Lucas.

25 5. Concerned about this issue, Mr. Winters acted prudently by repeatedly  
26 contacting Carnival – both by phone and in writing – to inquire about their policy  
27 in an attempt to determine whether he would, in fact, be able to disembark at Cabo  
28 San Lucas. Mr. Winters was repeatedly referred to the equivocal policy by

1 Carnival representatives. In addition, however, he was given oral assurance that he  
2 would be allowed to disembark barring certain poor weather conditions, and  
3 provided with information that suggested that at least one shore excursion at Cabo  
4 San Lucas was accessible to people with disabilities.

5 6. Despite the assurances and information Mr. Winters had received before  
6 his cruise, namely that he and his fellow travelers would be able to disembark  
7 absent bad weather, Mr. Winters received a different story once he was aboard the  
8 ship. After leaving on the *Elation* from San Diego, Mr. Winters was told by the  
9 ship's crew that the port of call of Cabo San Lucas was off limits to people with  
10 mobility disabilities because the disembarkation method was inaccessible. The  
11 crew explained that unless a person can navigate the stairs the tendering process  
12 used at Cabo San Lucas is off limits.

13 7. As a result, Mr. Winters and other members of his travel club were  
14 forced to stay aboard the ship while most of the rest of passengers disembarked to  
15 enjoy their day at Cabo San Lucas. Left aboard, Mr. Winters and his companions  
16 were faced with the prospect of few services, since most shops and the spa were  
17 closed. There were little to no activities for those who stayed behind, other than a  
18 single bar and snack shop.

19 8. This experience was humiliating and degrading for Mr. Winters. Since  
20 Mr. Winters did not have the option of disembarking, he and his companions were  
21 effectively excluded and segregated him from the rest of the *Elation* population  
22 and denied full and equal access to Defendants' goods and services on the basis of  
23 disability.

24 9. As a result of the above, Defendants have violated the Americans with  
25 Disabilities Act, and analogous state nondiscrimination statutes, designed to  
26 prohibit unfair treatment of people with disabilities, as well as Business and  
27 Professions Code Section 17200, designed to prohibit such unfair business  
28 practices.

## JURISDICTION AND VENUE

10. The claims alleged herein arise under the Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*) ("ADA"), among other state claims for relief, such that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. Through the same actions and omissions that form the basis of Plaintiff's federal claims, Defendants have also violated Plaintiff's rights under state law, over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over Plaintiff's claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 65 of the Federal Rules of Civil Procedure.

11. Venue over Plaintiff's claims is proper in the Southern District of California because a substantial part of the events, acts, and omissions giving rise to Plaintiff's claims occurred in the Southern District of California as required by 28 U.S.C. § 1391. Mr. Winters bought his ticket in Southern California, and the cruise started and ended in San Diego, California.

## PARTIES

12. Plaintiff Roland Winters is an individual with a physical disability within the meaning of all applicable statutes, including the ADA, 42 U.S.C. § 12101, *et seq.*, California Civil Code § 51, *et seq.*, and California Civil Code § 54 *et seq.* Mr. Winters utilizes a wheelchair for mobility. Mr. Winters resided in Orange County California at the time he purchased the tickets for the January 2008 cruise on the *Elation* and at the time he went on the cruise. He is currently a resident of Maricopa County, Arizona.

13. Defendant Carnival Corporation & PLC is a corporation headquartered in both Miami, Florida and London, England. Carnival Corporation does business in California as Carnival Cruise Lines. Carnival operates several fleets including the *Elation*, which departs from San Diego, and operates under the slogan, "The Fun Ships."

1        14. The defendants whose identities are unknown are sued herein under the  
2 names DOES 1 through 10 ("DOES"). Plaintiff is informed and believes and  
3 thereon alleges that all of the Defendants, including the DOES, are in some  
4 manner responsible for the injuries and damages herein alleged. Plaintiff sues the  
5 DOES in their individual and official capacities.

6                    **FACTS APPLICABLE TO ALL CAUSES OF ACTION**

7        15. Each and every allegation set forth in each and every statement of the  
8 Complaint is hereby incorporated by reference in each and every other averment  
9 and allegation of this Complaint.

10        16. Roland Winters, due to muscular problems, uses a motorized wheelchair  
11 for mobility. Mr. Winters was personally concerned that he and the others who  
12 also used wheelchairs would be able to participate in all of the ship's activities,  
13 including excursions to major ports, such as Cabo San Lucas, Mexico.

14        17. Mr. Winters had worked hard to organize this trip for the 14 other  
15 members of the Handicapped Travel Club. All of that hard work was undermined  
16 by the unequal treatment received by Mr. Winters on board Carnival's vessel.

17        18. On or about June 20, 2007, before the sail date, Mr. Winters received a  
18 copy of Carnival's policy for passengers who use wheelchairs. The policy, which  
19 is also posted on the official Carnival website, stated that if tenders at a certain  
20 port or the tendering process under certain weather conditions are unsafe for  
21 passengers in a wheelchair, ship officials have ultimate discretion as to whether a  
22 person using a wheelchair can board the tender.

23        19. Alerted by the possibility he or his acquaintances would not be able to  
24 visit a port on the cruise, Mr. Winters repeatedly contacted Carnival's "Special  
25 Needs Desk"—both by phone and in writing—to determine whether he and his  
26 companions who used wheelchairs would be able to disembark at Cabo San Lucas.  
27 Mr. Winters was repeatedly referred to the policy by Carnival representatives and  
28 was given oral assurance that he would be allowed to tender barring certain poor

1 weather conditions.

2 20. During a telephone conversation on or about June of 2007, a  
3 representative at Carnival's Special Needs Desk told Mr. Winters that the rough  
4 seas would be the only reason Mr. Winters and his acquaintances may not be able  
5 to tender when the *Elation* was at Cabo San Lucas.

6 21. Not willing to spend a vast amount of money just to be left on a ship that  
7 promised to show its passengers exciting and fun destinations, Mr. Winters kept  
8 pressing Carnival for a definite position on whether he would be able to disembark  
9 to visit Cabo San Lucas. He wrote a letter to Carnival. Mr. Winters reiterated his  
10 request that Carnival tell him whether he would be able to disembark to visit Cabo  
11 San Lucas. He referenced his telephone conversation with Mr. Morrison in which  
12 the Carnival employee cited rough seas as the only reason Mr. Winters would not  
13 be able to board the tender at Cabo San Lucas.

14 22. Mr. Winters did not hear back from Carnival until October 2007, almost  
15 three months later. By then, it was too late for Mr. Winters to cancel the cruise  
16 without a penalty. However, even then, Carnival again failed to answer Mr.  
17 Winters' question regarding whether he would be able to disembark at Cabo San  
18 Lucas. Instead, he was provided with information on cruise ship accessibility in  
19 general, and the accessibility of cabins. However, this representative again failed  
20 to provide a straight answer about whether the port at Cabo San Lucas was  
21 accessible to people with disabilities.

22 23. In advance of his trip, Mr. Winters also received information regarding  
23 shore excursions at Cabo San Lucas. At least one these shore excursions was  
24 listed with a wheelchair symbol indicating it was accessible to people with  
25 disabilities. This, of course, led Mr. Winters to believe that he could go to shore  
26 because the shore excursions, by definition, left from shore.

27 24. Mr. Winters also received a letter from his travel agent reassuring him  
28 that Carnival would be able to transfer people in wheelchairs to a tender to



1 disembark at Cabo San Lucas absent bad weather conditions.

2 25. On January 26, 2008, Mr. Winters boarded the *Elation*, expecting this  
3 trip to be filled with relaxation, adventure, and fun both on and off the ship. Part  
4 of his plan was to disembark from the ship upon arriving at Cabo San Lucas, one  
5 of the ports of calls with 14 other members of his travel club on or about January  
6 28, 2008.

7 26. Once on board the ship, however, Mr. Winters was told by the ship's  
8 crew that the port of call of Cabo San Lucas was off limits to people with mobility  
9 disabilities because the disembarkation method was inaccessible. More  
10 specifically, a short stairway leads to the dock where passengers board a tender.  
11 Thus, they explained, unless a person can navigate the stairs, the tendering process  
12 is off limits regardless of weather.

13 27. This denial of a service of Carnival's came as a great shock to Mr.  
14 Winters, who had made great efforts to get an answer about this issue before  
15 traveling and who had received assurances and information before his cruise that  
16 he and his fellow travelers would be able to disembark absent bad weather.

17 28. As a result, Mr. Winters and other members of his travel club were  
18 forced to stay aboard the ship, where the shops and spa were closed, and where  
19 there were no activities for those who stayed behind, other than a single bar and  
20 snack shop.

21 29. Moreover, believing he would be able to get off the ship at Cabo San  
22 Lucas Mr. Winters had made arrangements for an accessible tour which was to  
23 depart from Cabo San Lucas. Mr. Winters arranged this tour separately from the  
24 cruise because many of the excursions offered by Carnival were not accessible to  
25 people with disabilities. However, because the port was not accessible to him, he  
26 and other members of this group were unable to participate in the tour that he had  
27 previously arranged.

28 30. Had Mr. Winters known he would not have been able to disembark, he

1 would not have bought a ticket for the cruise, let alone organize a trip for fifteen  
2 others members of his travel club for people with disabilities. Alternatively, he  
3 may have selected another Carnival cruise with more options for people with  
4 disabilities, or otherwise planned accordingly.

5 31. In addition to being denied the opportunity to enjoy himself in Cabo San  
6 Lucas, Mr. Winters encountered physical barriers to the benefits and services of  
7 the *Elation*. Mr. Winters was placed in a so-called "modified" cabin room, which  
8 presented a number of obstacles to him.

9 32. For example, the dial to adjust the room heater in the modified cabin was  
10 located on the ceiling, out of reach of a person using a wheelchair. Mr. Winters  
11 was cold during his stay on the *Elation* because he could not turn the dial to warm  
12 up the room. In addition, the shower in Mr. Winters' cabin did not provide  
13 sufficient room for a person using a wheelchair to shower properly. The shower  
14 area does not allow a person using a wheelchair to be fully covered by running  
15 water. Instead, the person has to wash and rinse either her/his top or bottom half  
16 first, then roll her/his wheelchair to wash and rinse the other half. As a result, half  
17 of the person's body is exposed to the air, making her/him cold.

18 33. Finally, the topmost deck of the ship, the Sports Deck, is accessible only  
19 by stairs. Ping pong tables, an exercise room, and various other activities located  
20 on that deck were inaccessible to Mr. Winters. Carnival failed to make any  
21 accommodations for Mr. Winters to address those services that were available  
22 only on the top deck.

23 34. Mr. Winters has been deterred from going on another Carnival cruise  
24 because of Carnival's discriminatory treatment. Despite the fact that he is an  
25 experienced traveler and a veteran cruiser, Mr. Winters has avoided riding aboard  
26 a Carnival cruise ship because of the discrimination he and his acquaintances  
27 faced on the *Elation* earlier this year. However, Mr. Winters wants to and intends  
28 to enjoy Carnival's cruises once he is assured that the discriminatory treatment has



1 ended and that he will be provided accurate information regarding the level of  
2 accessibility on Carnival's cruises.

3 35. As a result of the above, Defendant has violated state and federal  
4 nondiscrimination requirements. Such actions violate, *inter alia*, Title III of the  
5 Americans with Disabilities Act's requirement that Defendants ensure that patrons  
6 with mobility disabilities receive equal benefits and equal access to the goods and  
7 services and offered by Carnival. Upon information and belief, Plaintiff alleges  
8 that these discriminatory and unfair practices continue through the present.

9 36. Accordingly, Plaintiff brings this action seeking injunctive and  
10 declaratory relief in order to compel Defendants to comply with its obligations to  
11 provide equal access to its goods and services, otherwise not discriminate against  
12 people with disabilities, and provide accurate information regarding the  
13 accessibility of their services to allow people with disabilities to make informed  
14 consumer choices. Plaintiff also seeks damages in addition to his attorneys' fees  
15 and costs.

### 16 FIRST CAUSE OF ACTION

#### 17 Title III of the Americans with Disabilities Act

#### 18 42 U.S.C. §§ 12181 *et. seq.*

19 37. Plaintiff incorporates by reference each and every allegation contained in  
20 the foregoing paragraphs.

21 38. Congress enacted the ADA upon finding, among other things, that  
22 "society has tended to isolate and segregate individuals with disabilities" and that  
23 such forms for discrimination continue to be "serious and pervasive social  
24 problem." 42 U.S.C. § 12101(a)(2).

25 39. In response to these findings, Congress explicitly stated that the purpose  
26 of the ADA is to provide "a clear and comprehensive national mandate for the  
27 elimination of discrimination against individuals with disabilities" and "clear,  
28 strong, consistent, enforceable standards addressing discrimination against

1 individuals with disabilities.” 42 U.S.C. § 12101(b)(1)-(2).

2 40. The ADA provides, *inter alia*, that it is discriminatory to subject an  
3 individual or class of individuals on the basis of a disability “to a denial of the  
4 opportunity of the individual or class to participate in or benefit from the goods,  
5 services, facilities, privileges, advantages, or accommodations of an entity.” 42  
6 U.S.C. § 12182(a)(i).

7 41. The ADA further provides that it is discriminatory “to afford an  
8 individual or class of individuals, on the basis of a disability . . . with the  
9 opportunity to participate in or benefit from a good, service, facility, privilege,  
10 advantage, or accommodation that is not equal to that afforded to other  
11 individuals,” and to fail “to make reasonable modifications in policies, practices,  
12 or procedures, when such modifications are necessary to afford such goods,  
13 services, facilities, privileges, advantages, or accommodations to individuals with  
14 disabilities, unless the entity can demonstrate that making such modifications  
15 would fundamentally alter the nature of such goods, services, facilities, privileges,  
16 advantages, or accommodations.” 42 U.S.C. §§ 12182(a)(ii) & (b)(2)(A)(ii).

17 42. The ADA also prohibits the imposition or application of eligibility  
18 criteria that screen out or tend to screen out an individual with a disability or any  
19 class of individuals with disabilities from fully and equally enjoying any goods,  
20 services, facilities, privileges, advantages, or accommodations of the public  
21 accommodation. 42 U.S.C. §§ 12182(b)(1)(A)(ii) & (b)(2)(A)(i).

22 43. Defendants’ acts and omissions alleged herein are in violation of the  
23 ADA, 42 U.S.C. sections 12181, *et seq.*, and the regulations promulgated  
24 thereunder.

25 44. Carnival owns and operates a public accommodation, the ship *Elation*,  
26 which is covered by Title III of the ADA. 42 U.S.C. § 12181(7)(I).

27 45. Plaintiff is a person with mobility disabilities and thus is specifically  
28 protected under the ADA. 42 U.S.C. § 12102(2); and 28 C.F.R. § 36.104.

1 46. Defendants' conduct constitutes ongoing and continuous violations of  
 2 the ADA and, unless restrained from doing so, Defendant will continue to violate  
 3 said law. Said conduct, unless enjoined, will continue to inflict injuries for which  
 4 Plaintiff has no adequate remedy at law. Consequently, Plaintiff is entitled to  
 5 injunctive relief pursuant to the ADA. 42 U.S.C. § 12188.

6 47. Plaintiff is also entitled to reasonable attorneys' fees and costs pursuant  
 7 the ADA. 42 U.S.C. § 12205.

## 8 **SECOND CAUSE OF ACTION**

### 9 **Unruh Civil Rights Act**

#### 10 **California Civil Code §§ 51 *et seq.***

11 48. Plaintiff incorporates by reference each and every allegation contained in  
 12 the foregoing paragraphs.

13 49. California's Unruh Civil Rights Act prohibits discrimination against  
 14 individuals with disabilities and also prohibits discrimination based on a person's  
 15 race. Section 51 of the California Civil Code provides, in relevant part:

16 All persons within the jurisdiction of this state are free  
 17 and equal, and no matter what their ... disability ... are  
 18 entitled to the full and equal accommodations,  
 19 advantages, facilities, privileged, or services in all  
 20 business establishments of every kind whatsoever.  
 21 Cal. Civ. Code § 51(b).

22  
 23 50. The Unruh Act provides that "[a] violation of the right of any individual  
 24 under the Americans with Disabilities Act ... shall also constitute a violation of  
 25 this section." Cal. Civ. Code § 51(f).

26 51. As set forth above, Defendant discriminated against Plaintiff based on  
 27 his disability, by instituting policies that discriminate against people with mobility  
 28 disabilities.

1 52. Defendants' actions constitute a violation of, among other laws, the  
2 Americans with Disabilities Act.

3 53. Plaintiff's mobility disability limits a major life activity; thus he is  
4 protected under the Unruh Civil Rights Act. Cal. Civ. Code § 51(e)(1); Cal.  
5 Gov't. Code § 12926(k).

6 54. Carnival is a business establishment regulated by the Unruh Civil Rights  
7 Act. Cal. Civ. Code § 51(b).

8 55. As a direct and proximate result of Defendants' conduct, Plaintiff has  
9 suffered damages.

10 56. As such, the Plaintiff is entitled to damages, including statutory damages  
11 in an amount up to three times the amount of their actual damages, with a  
12 minimum amount of \$4,000 per offense. Plaintiff is also entitled to attorneys'  
13 fees. Cal. Civ. Code § 52(a), (e) and § 52.1(h).

14 57. Plaintiff is also entitled to injunctive and declaratory relief. Cal. Civ.  
15 Code § 52.1(b).

### 16 **THIRD CAUSE OF ACTION**

#### 17 **Blind and Other Physically Disabled Persons Act**

#### 18 **California Civil Code §§ 51 *et seq.***

19 58. Plaintiff incorporates by reference each and every allegation contained in  
20 the foregoing paragraphs.

21 59. Through the acts and omissions described herein, Defendant is violating  
22 California Civil Code § 54 which states that "[i]ndividuals with disabilities or  
23 medical conditions have the same rights as the general public to the full and free  
24 use of public services."

25 60. Under California Civil Code § 54(c), a violation of the ADA also  
26 constitutes a violation of California Civil Code §§ 54 *et seq.*

27 61. Plaintiff is a person with disabilities with the meaning of California Civil  
28 Code § 54(b) (1) and California Government Code § 12926.

1        62. Defendant owns and operates cruise ships, which are boats for public  
2 transportation and/or hotels, both of which are regulated by the Blind and Other  
3 Physically Disabled Persons Act. Cal. Civil Code § 54.1(a)(1).

4        63. By failing to provide accommodations to Mr. Winters, a passenger with a  
5 disability, Defendant is violating California Civil Code §§ 54 *et seq.*, by denying  
6 him full access to the benefits and services of its ship.

7        64. Under California Civil Code §§ 54 *et seq.*, Plaintiff is entitled to  
8 injunctive relief, attorneys' fees and costs. Pursuant to California Civil Code § 54  
9 (c), Defendants are also liable to each Plaintiff for no less than \$1,000 for every  
10 violation of California Civil Code § 54 *et seq.*, or three times actual damages, and  
11 for injunctive relief, attorneys' fees and costs incurred in this action.

#### 12                                    **FOURTH CAUSE OF ACTION**

##### 13                                    **Unfair Business Practice**

##### 14                                    **Business and Professions Code §17200**

15        65. Plaintiff incorporates by reference each and every allegation contained in  
16 the foregoing paragraphs.

17        66. Defendant's conduct, as alleged, is part of a general business practice by  
18 Defendant. Defendant has made a considered decision to promote patronage at the  
19 expense of Defendant's legal obligations to patrons with mobility disabilities.

20        67. Defendant's policies and practices constitute an unfair, fraudulent,  
21 deceitful and unlawful business practice within the meaning of California  
22 Business and Professions Code sections 17200, *et seq.*, in that, *inter alia*,  
23 Defendant appeals to, advertises to, and purports to serve all people, including  
24 persons with mobility disabilities, yet Defendant's misrepresentation of Carnival's  
25 policies are illegal, discriminatory and in violation of public policy. Moreover,  
26 Defendant provides misleading and confusing information that led Plaintiff to  
27 believe that he would be able to access services that were in fact inaccessible to  
28 him during his cruise.

1       68. Plaintiff has suffered injury as a result of Defendant's unfair and illegal  
2 business policy, including, but not limited to being provided inaccurate  
3 information before embarking on the *Elation*, enticing the Plaintiff to purchase  
4 tickets for a cruise that provided no or little benefit for him and his companions  
5 with respect to their ability to visit a port of call, participate in shore excursions  
6 and enjoy activities on the ship, and being discriminated against while on aboard  
7 the *Elation* by physical inaccessibility of modified cabins and the topmost deck.

8       69. As noted above, these practices also violate numerous statutes,  
9 including, the Americans with Disabilities Act, 42 U.S.C. §12181, and California  
10 Civil Codes 51 and 54.

11       70. Plaintiff is entitled to restitution and an injunction restraining Defendant  
12 from engaging in any act or omission, or failing to engage in any act or omission,  
13 the effect of which is to cause, directly or indirectly, discrimination by Defendant  
14 against persons with mobility disabilities. Plaintiff is also entitled to attorneys'  
15 fees and costs.

## 16                               FIFTH CAUSE OF ACTION

### 17                               Intentional Infliction of Emotional Distress

18       71. Plaintiff incorporates by reference each and every allegation contained in  
19 the foregoing paragraphs.

20       72. Through the acts and omissions described herein, and other such acts,  
21 Defendant refused to provide Plaintiff with goods and services in a manner  
22 comparable to the goods and services provided to people without disabilities  
23 solely because of their disabilities.

24       73. Defendant's treatment of Plaintiff because of his disabilities constitutes  
25 outrageous conduct.

26       74. Defendant's conduct was intentional and malicious and done for the  
27 purpose of causing Plaintiff to suffer humiliation, mental anguish, loss of appetite,  
28 and emotional and physical distress.



75. As the proximate result of the acts and omissions described herein, and other such acts, Plaintiff suffered humiliation, mental anguish, and emotional distress.

76. Plaintiff is informed and believes and based thereon alleges that Defendant's acts and omissions described herein, and other such acts, were willful, reckless, oppressive, malicious and done with a callous disregard of the consequences substantially certain to occur and justify an award of exemplary and punitive damages.

## SIXTH CAUSE OF ACTION

## Negligence Per Se

77. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

78. As a place of public accommodation and as a business establishment in the state of California, the *Elation* and Carnival have statutory duties to each of its customers, including Plaintiff, to provide them with: (1) the full and equal enjoyment of its goods and services (42 U.S.C. § 12182(a)); (2) full and equal goods and services (Cal. Civ. Code § 51(b)); and (3) full and equal access (Cal. Civ. Code § 54.1(a)(1)).

79. Through the acts and omissions described herein, and other such acts, Defendant breached the statutory duties described in paragraph 78 that it owed to Plaintiff by its policies described above.

80. By violating the statutes described in paragraph 78 and causing the very injury those statutes were designed to prevent, namely discrimination against people with disabilities, Defendant committed negligence per se. Defendant's breach of its duties to Plaintiff was a proximate cause of the injuries and loss suffered by Plaintiff, including but not limited to emotional distress.

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1 **SEVENTH CAUSE OF ACTION**

2 **False Imprisonment**

3 81. Plaintiff incorporates by reference each and every allegation contained in  
4 the foregoing paragraphs.

5 82. Defendants intentionally deprived Plaintiff of his freedom of movement  
6 by the use of fraud and deceit to mislead Plaintiff into believing he would be able  
7 to disembark when the *Elation* docked at Cabo San Lucas, and then refusing to  
8 allow him to board a tender once the boat was at Cabo San Lucas.

9 83. Plaintiff did not consent to the imprisonment.

10 84. Plaintiff is informed and believe and based thereon allege that Defendant  
11 unlawfully ordered them to remain on the *Elation* and refused to allow them to  
12 board a tender when the ship was docked at Cabo San Lucas.

13 85. Plaintiff was not allowed off the *Elation* for the duration that the ship  
14 was docked at Cabo San Lucas.

15 86. Plaintiffs were actually harmed by Defendant Carnival's actions.

16 87. As a direct, foreseeable, and proximate result of said wrongful acts by  
17 Defendants, Plaintiff suffered and will continue to suffer humiliation, shame,  
18 despair, embarrassment, depression, and mental pain and anguish, all to Plaintiff's  
19 damage in an amount to be proven at time of trial.

20 88. As a further direct, foreseeable, and proximate result of said wrongful  
21 acts by Defendants, Plaintiffs have incurred attorneys' fees in an amount to be  
22 determined, for which Plaintiff claims a sum to be established according to proof.

23 89. The conduct of defendants and their agents and employees as described  
24 herein was oppressive, fraudulent and malicious, done in conscious disregard of  
25 Plaintiffs' rights, and done by managerial employees of Defendant. Plaintiffs are  
26 thereby entitled to an award of punitive damages against Defendant, in an amount  
27 appropriate to punish and make an example of defendants, and in an amount to  
28 conform to proof.

**EIGHTH CAUSE OF ACTION**

**Declaratory Relief**

90. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

91. Plaintiff contends, and is informed and believes that Defendant denies, that Defendant fails to comply with applicable law prohibiting discrimination against persons with mobility disabilities and are in violation of various civil rights statutes and the California Business and Professions Code.

92. In addition, Plaintiff contends, and is informed and believes that Defendants deny, that the ticket contract required is void and unenforceable in that it is both procedurally and substantively unconscionable, and in violation of public policy

93. A judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1) A declaration that Defendant violated Title III of the ADA and its implementing regulations, the Unruh Civil Rights Act, Disabled Persons Act, and Business and Professions Code 17200, by failing to provide full and equal enjoyment of its goods and services to Plaintiff and failing to provide accurate information about the accessibility of its goods and services;

2) A permanent injunction directing Defendant to alter its policies, practices and procedures, including employee training, to ensure that it

1 affords full and equal enjoyment of its goods and services for people with  
2 disabilities, including Plaintiff, as required by the ADA, the Unruh Civil Rights  
3 Act, Disabled Persons Act, and Business and Professions Code Section 17200;  
4

5 3) An award of compensatory, statutory and punitive damages in  
6 an amount according to proof, and restitution of monies obtained through unfair  
7 business practices;  
8

9 4) An award of Plaintiff's attorneys' fees and all costs incurred in  
10 bringing this action pursuant to applicable law; and  
11

12 5) Such other relief as the Court deems just and fair.  
13

14 DATED: July 30, 2008

Respectfully Submitted,

15  
16  
17 By: Shawna L. Parks /s/   
18 Shawna L. Parks  
19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38 on all issues and claims for which Plaintiff is entitled to a jury trial.

DATED: July 30 2008

Respectfully Submitted,

By: Shawna L. Parks *ue*  
Shawna L. Parks  
Attorneys for Plaintiff

# CIVIL COVER SHEET

2008 JUL 30 PM 2:45  
CARNIVAL CORPORATION & P.L.C. v/a Carnival Cruise  
Lines, a business entity, and DOES OR DOES NOT

ROLAND WINTERS, JR., an individual

(b) County of Residence of First Listed Plaintiff Maricopa County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

SHAWNA L. PARKS 213-736-1477  
Disability Rights Legal Center, 919 Albany Street, L.A., CA 90015

County of Residence of First Listed Defendant Dade County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
BY: SP LAND INVOLVED.

Attorneys (If Known)

08 CV 1380 DMS BY FAX

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- |                            |                              |                                       |  |
|----------------------------|------------------------------|---------------------------------------|--|
| <input type="checkbox"/> 1 | U.S. Government<br>Plaintiff | <input checked="" type="checkbox"/> 3 | Federal Question<br>(U.S. Government Not a Party)          |
| <input type="checkbox"/> 2 | U.S. Government<br>Defendant | <input type="checkbox"/> 4            | Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY		BANKRUPTCY		OTHER/STATUTES			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury		<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other		<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark		<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609			
				<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions							

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from another district (specify)    ☐ 6 Multidistrict Litigation    ☐ 7 Judge from Magistrate Judgement

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
Title III of the American with Disabilities Act (42 U.S.C. Sec. 12181 et seq.)

Brief description of cause:  
Disability discrimination and unfair business practices.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

Per Proof

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S)  
IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE \_\_\_\_\_

SIGNATURE OF ATTORNEY OF RECORD

7/30/08

SIGNATURE OF ATTORNEY OF RECORD  
Shirley L. Parks (c)

**FOR OFFICE USE ONLY**

RECEIPT # **2** 153496

AMOUNT

## APPLYING IFP

JUDGE

MAG. JUDGE

TAC

7/30/08



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 153496 - TC**

**July 30, 2008  
14:47:54**

**Civ Fil Non-Pris**

USAO #.: 08CV1380

Judge.: DANA M SABRAW

Amount.: \$350.00 CK

Check#.: BC3028922

**Total-> \$350.00**

FROM: ROLAND WINTERS  
VS.  
CARNIVAL CORPORATION